

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34686

STATE OF IDAHO,)	2009 Unpublished Opinion No. 407
)	
Plaintiff-Appellant,)	Filed: March 31, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
GEORGE RAY ECKROTH-CROFT,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Respondent.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Second Judicial District, State of Idaho, Latah County. Hon. John R. Stegner, District Judge.

Appeal from district court's order regarding confidential information, remanded with instructions.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for appellant. Kenneth K. Jorgensen argued.

Clark & Feeney, Lewiston, for respondent. Charles M. Stroschein argued.

GRATTON, Judge

The State appeals from the district court's order striking portions of George Eckroth-Croft's social security number and date of birth from the State's charging document. We modify the district court's order and remand with instructions.

I.

FACTS AND PROCEDURAL BACKGROUND

The State charged George Ray Eckroth-Croft with delivery of marijuana, Idaho Code § 37-2732(a)(1)(B), possession of marijuana with intent to deliver, I.C. § 37-2732(a)(1)(B), and possession of paraphernalia, I.C. § 37-2734A(1). The pleadings filed by the State contained personal identifying information, consisting of Eckroth-Croft's name, date of birth, and social security number. Pursuant to Idaho Criminal Rule 7(d), Eckroth-Croft orally moved to strike his date of birth and social security number from the "Information and other pleadings filed," claiming it was surplusage. Eckroth-Croft acknowledged that the "State has the right to gain

access to the personal information of any defendant,” but argued that “there is no statute nor is there a rule that allows the State to disseminate the information in a public record.” The State objected to the motion.

After hearing on the motion, the district court granted the motion in part. The court ordered all but the last four numbers of Eckroth-Croft’s social security number and all but the year of Eckroth-Croft’s date of birth redacted from the information. The State filed a motion to reconsider, which the court denied at the sentencing hearing. The district court entered an order withholding judgment and placed the defendant on probation. The State appeals from the district court’s order contending that the district court erred in granting, in part, defendant’s motion to strike the defendant’s date of birth and social security number from the charging document.

II.

ANALYSIS

The district court, in its initial decision on the motion to strike, ordered that “the first five digits of Mr. Eckroth-Croft’s social security number shall be redacted” and “the month and day of his birth shall be redacted.” The State, apparently believing that the district court had ordered modification of original documents in the file, filed a motion for reconsideration. The State argued in its supporting brief:

Given the Court’s decision and cases referred to in its order, the appropriate remedy is to prohibit disclosure of the Defendant’s birth date and social security number to the general public, rather than to strike such information from the documents filed with the court.

The State concluded that I.C. § 9-340A(2) and Idaho Court Administrative Rule 32 provide the tools necessary to protect the information from disclosure. Alternatively, the State argued that the court could require that the personal identifying information be filed under seal as a “Part II” of any pleading or sentencing order otherwise filed. The district court took up the motion for reconsideration at the sentencing hearing and held:

I’m going to consider the Motion to Reconsider, but I’m going to deny it. I think -- I appreciate that the case law wasn’t precisely on point in my opinion, but I think that it is nevertheless confidential. So, I’m going to strike the first five digits of the Social Security number and the month and date of birth.

I think it’s a different question as to whether the State may attach that information to the Information and attach it in some confidential format. I think as long as it’s attached in a confidential format that a defendant’s concern has been addressed

and that the issue has been resolved. So, to the extent that I get to issue advisory opinions, that's my advice.

After sentencing, the question was raised as to whether the personally identifying information could be included in the sentencing order. The district court stated:

Well, the problem I have with including one's Social Security number in a public document is that it then becomes public. We don't know that simply because one is convicted that one's Social Security number falls from the realm of private to public.

So, back to my advisory position, and that is if you attached that personally identifiable information in a sealed envelope, I don't see that there's any problem with that in a future case. The fact that somebody can access this file, look up someone's Social Security number and say, hum, I think I'll -- I know Mr. Eckroth-Croft's birth date. I know his Social Security number. I know his mother's maiden name. And with that information, one can do a lot of havoc to someone's identity. And that's what I was concerned with.

Thereafter, the district court entered a written order withholding entry of judgment and order of probation. Also, the district court entered a separate written "Part II - Order Withholding Judgment (Under Seal)," which contained Eckroth-Croft's personally identifying information and which was filed under seal.

At oral argument, the State clarified the issues and relief requested on this appeal. We are not asked to determine whether the law expressly allows or prohibits the placing of personally identifying information in pleadings to be filed with the court and, therefore, express no opinion thereon. We are not asked to review the district court's factual findings and legal conclusions or the sufficiency of the evidence supporting the district court's order and, therefore, express no opinion thereon. Furthermore, the State does not claim error in regard to the district court's handling of the entry of the order withholding entry of judgment and order of probation coupled with the entry of the separate "Part II" order withholding judgment, containing Eckroth-Croft's personally identifying information, filed under seal. Indeed, that procedure was expressly suggested by the State, in the motion for reconsideration, as an alternative method for protection of the personal information from disclosure.

However, the State continues to believe that as to the information and other pleadings, excluding the order withholding entry of judgment and order of probation, the district court erroneously ordered modification of the original documents in the record. This is the only issue

presented by the State. The State argues that the district court failed to follow the method of redaction set out in I.C.A.R. 32(i), which states:

When the court issues an order redacting records for purposes of public disclosure, the records in the court file or in the custody of the court shall not be altered in any fashion. The originals shall be placed in a manila envelope marked “sealed” with a general description of the records, and a redacted copy, so marked, shall be substituted for the originals in the court file.

The only remedy that the State seeks is a remand of this matter instructing the district court to comply with the above directive regarding redaction. When asked at oral argument whether the district court followed this procedure, counsel for Eckroth-Croft responded that he did not know. He acknowledged, however, that if the only dispute left on appeal is whether the district court appropriately followed the redaction procedures of I.C.A.R. 32(i), then he did not dispute a remand to the district court to address that limited issue.

III.

CONCLUSION

Therefore, based on the parties’ agreement on appeal, we remand the case with instructions that the district court modify its order to comply with the above-quoted requirements of I.C.A.R. 32(i).

Chief Judge LANSING and Judge GUTIERREZ, **CONCUR.**